UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/NGO/36
14 February 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 13 of the provisional agenda

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 February 1995]

Violations of rights of migrant workers and their families: the situation in the United States

1. The General Assembly, by its resolution 45/158 of 18 December 1990, adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Violations of the rights of migrant workers and their families has historically been viewed as a serious problem. In 1973, the Economic and Social Council affirmed the need for the United Nations to consider the situation of migrant workers, eventually resulting in the drafting of this treaty. The International Labour Organization has significantly contributed to the protection of the rights of migrant workers as is evidenced by its active role in the deliberations leading to the adoption of the Convention and its ongoing work on this issue. 1/

2. In resolution 1994/17 of 25 February 1994, the Commission on Human Rights recognized that, in spite of the establishment of the Convention, further efforts are needed to ensure the rights of migrant workers and their families The Commission urged Member States to guarantee protection of these rights by ratifying the Convention.

3. While there are many treaties in force that would cover the rights of migrant workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides additional protections needed specifically to address their status as migrant workers and circumstances unique to that status. The Convention provides specifically tailored definitions, such as "frontier worker" and "seafarer", 2/ which describe persons who might not be covered under other treaties. The Convention provides protection for both documented and undocumented migrant workers. Some treaties, such as the International Convention for the Elimination of All Forms of Racial Discrimination, specifically exclude persons who would be covered by the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. 3/ Furthermore, the scope of the Convention is very broad and provides protection in the special circumstances unique to the status of migrant workers. For example, article 19 states that the status of migrant workers shall be taken into account in sentencing. Articles 20 and 21 provide for special protection regarding deprivation of residence, work permits and confiscation of documents. Article 27 suggests that workers be reimbursed for contributions they make for benefits for which they are not eligible. 4/ The Convention is imperative in the comprehensive protections it provides to migrant workers and their families.

4. Nevertheless, as of 1 December 1993, the Convention has been signed by Chile, Mexico and the Philippines, acceded to by Egypt and ratified by Morocco. To date, only two countries have ratified this Convention. In spite of the General Assembly's adoption of this treaty, further efforts are needed to protect the rights of migrant workers and their families.

5. In many host countries which have not yet ratified the Convention, migrant workers fulfil all obligations of citizenship, but none the less are denied equal rights and opportunities. Anti-immigrant and racist sentiments inspire laws which violate fundamental rights of migrant workers and their families.

6. In the United States, the recent passage and contemplation of laws infringing the rights of migrant workers and their families in states with large immigrant populations, such as California and Florida, 5/ as well as the introduction of similar bills on the federal level, such as H.R.4, 6/ exemplifies the potential for violations of rights of migrant workers and their families in host countries that have not yet ratified the Convention.

7. On 8 November 1994, more than 5 million California voters adopted Proposition 187, 7/ which bars undocumented persons from public hospitals, health care clinics, public schools and public social service agencies. Proposition 187 requires public health care providers, public educational institutions, and public social service agencies to report to the federal Immigration and Naturalization Service (INS) all persons suspected of being

undocumented. 8/ Proposition 187 will undoubtedly result in arbitrary discrimination against and harassment of migrant workers and their families. It will effectively deny them equal rights and opportunities.

8. Although the application of Proposition 187 has been stayed temporarily pending further litigation as to its constitutionality, 9/ it remains significant in that it exemplifies the potential for violations of rights of migrant workers and their families in host countries which have not yet ratified the Convention. It demonstrates the need to facilitate the adoption of the Convention by all Member States.

Proposition 187 poses an immediate danger to the health of migrant workers and members of their families 10/

9. Proposition 187 will prevent many migrant workers and their families from receiving publicly funded health care, endangering the lives of many migrant workers and their families who need medical treatment. Migrant workers and members of their families will not receive medical treatment for conditions related to pesticides and toxic chemicals, which they are exposed to by the very nature of their work.

10. Out of fear of being reported to INS, many migrant workers and members of their families in desperate need of medical attention may wait until their condition becomes an emergency before seeking medical care, or they may not seek medical care at all. Treatable medical conditions will deteriorate into medical emergencies, unnecessarily painful, traumatic and often life-threatening. Many migrant workers will not seek education regarding the transmission of communicable diseases and other health care matters.

11. Without treatment, infectious diseases, such as AIDS, hepatitis and tuberculosis, will spread and jeopardize entire communities of migrant workers and their families.

12. Many children of migrant workers will lose access to vaccines for what would otherwise be preventable diseases, resulting in unnecessary illnesses, deaths and the spread of communicable diseases, such as measles, mumps, rubella, diphtheria and hepatitis-B.

13. Many pregnant women will lose access to prenatal care which would otherwise prevent handicaps and facilitate the birth of healthy babies.

Under Proposition 187, many migrant workers and their families will be denied basic social services 11/

14. Proposition 187 will prevent many migrant workers and their families from receiving public social services, including health care education and information, such as advice to pregnant women regarding family planning or avoiding birth defects; agency protection for physically, emotionally and sexually abused children; and particular forms of financial assistance.

Proposition 187 will exclude both legal and undocumented children of migrant workers from public schools 12/

15. Under Proposition 187, many children of migrant workers will be prevented from attending public elementary, secondary and post-secondary educational institutions. The stigma of illiteracy will mark them for the duration of their lives. Lack of education will result in limited employment opportunities. The cycle of deprivation will be repeated, continuing a society stratified along lines of ethnicity and characterized by racism.

16. Even if a child is a United States citizen, Proposition 187 requires public schools to verify the legal status of the child's parents, and if necessary, to report the parents to INS for deportation. This proposition deters parents, fearing deportation, from sending to school undocumented children, as well as documented children who have undocumented family members.

Under Proposition 187, migrant workers and their families are subjected to discrimination and arbitrary enforcement 13/

17. Migrant workers and their families may be denied health care, social services, and education, if a state employee "determines or reasonably suspects" an illegal immigration status. The combination of low-level state employees' lack of expertise in immigration law, specifically determining immigration status, 14/ and their boundless latitude in making such determinations, inevitably will result in erroneous judgements and arbitrary and discriminatory enforcement. State employees may base their determinations on invidious factors such as an individual's skin colour, race, or national origin. This law may too easily be used to discriminate against particular minority groups, such as migrant workers and their families.

Conclusion

18. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ensures equality of treatment in relation to health services, 15/ social services, 16/ and education, 17/ as well as providing numerous other protections to migrant workers and their families. The Convention states that "Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law". 18/ More often than not, this is not the case. In the United States, as well as in other host countries, anti-immigrant and racist sentiments inspire laws, such as Proposition 187, which infringe upon the rights of migrant workers and their families by denying access to public services. Laws such as Proposition 187 result in arbitrary discrimination against and harassment of migrant workers and their families. The effect of these laws is the denial of equal treatment and opportunity. Therefore, it is imperative that the international community rededicate itself and renew its efforts to improving the situation and ensuring the rights of migrant workers and their families.

19. Having acclaimed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the international community has pledged itself to protect the rights of migrant workers and their families. Now, the international community must honour that pledge by implementing the Convention. It is time for all states which have not yet done so to ratify the Convention to ensure the protection of the rights of migrant workers and their families.

20. We ask that the Commission request that a working group of the Sub-Commission, at its next session, gather evidence of apparent violations of the rights of migrant workers and their families, with the goal of examining the significance of the Convention and the protections it provides to migrant workers and their families. The Commission should request an interim report for its consideration at its fifty-second session.

Notes

1/ See World Conference on Human Rights, document A/CONF.157/PC/61/Add.10.

2/ International Convention on the Protection of the Rights of All Migrant Workers and Their Families, article 2.2 (a), (c).

3/ International Convention for the Elimination of All Forms of Racial Discrimination, article 2.2.

4/ Other examples include article 4, which sets out a broad definition of the family; article 17, which provides that the State shall consider the problems that may be posed for family members when a migrant worker is deprived of liberty; article 37, which provides for full disclosure of working conditions by both the States of origin and employment; and articles 47 and 48, which provide for rights regarding the transfer of earnings and savings, and taxes.

5/ California passed Proposition 187 on 8 November 1994. Florida is considering the passage of similar legislation.

6/ H.R.4 was introduced in the United States House of Representatives on 4 January 1995. If passed, this bill will effectively eliminate migrant health care centres, as well as deny other forms of publicly funded social services regarding health care, welfare, housing and food.

7/ Although the legal classifications of people differ between the Convention and Proposition 187, those people protected under the Convention are those adversely affected by Proposition 187.

8/ Proposition 187 constructs a classification system that is inconsistent with the classifications established by the United States federal immigration law. Proposition 187 sets forth three narrowly defined

categories: (1) United States citizen; (2) alien lawfully admitted as a permanent resident; and (3) alien lawfully admitted for a temporary period of time. All individuals who do not fall into one of these categories are designated "illegal aliens". Under federal immigration law, there are numerous individuals who are unlawfully admitted under Proposition 187 yet are in the United States legally, such as asylees.

9/ In Gregorio T., et al. v. Wilson, the pending lawsuit in which Proposition 187 is being enjoined, there are four named plaintiffs. Gregorio T. and Carlos P. are undocumented children of migrant workers requiring medical treatment. Maria R. has been granted political asylum. Her children attend public school and require medical care. Xiomara T. is seeking asylum. She is pregnant and needs prenatal care.

10/ These facts are alleged in Gregorio T., et al. v. Wilson. Declarations available through the ACLU Foundation of Southern California.

11/ These facts are alleged in Gregorio T., et al. v. Wilson. Declarations available through the ACLU Foundation of Southern California.

12/ Idem.

13/ Idem.

14/ See note 7.

15/ Articles 43 (e) and 45 (c).

16/ Articles 43 (e) and 45 (c).

17/ Articles 43 (a) and 45 (a). The Convention further declares: "States of employment shall pursue a policy ... aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language" (art. 45 (a)).

18/ Article 24.